

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.379 of 2017 (O&M)
Date of decision: 16th November, 2019

Sardul Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. P.B.S. Goraya, Advocate for the petitioner.

Mr. Pawan Sharda, Sr. Dy. Advocate General, Punjab
for respondent No.1/State.

Ms. Shubreet Saron, Advocate for respondents No.2 to 5.

FATEH DEEP SINGH, J.

A case by way of FIR No.329 dated 01.12.2014 under Sections 304-B, 148, 149 IPC pertaining to Police Station Patti, District Tarn Taran was got registered on the complaint of petitioner Sardul Singh (resident of village Toot), father of deceased Manjeet Kaur. It was consequent upon completion of the investigations, Gurvinder Singh son of Sardul Singh, Amarjit Kaur wife of Gurdarshan Singh, both residents of village Bhangala, Rajvinder Kaur wife of Basant Singh, and Basant Singh son of Tara Singh, were found innocent and placed in column No.2 of the report under Section 173 Cr.P.C. The complainant during the trial stepped into the witness box as PW-1 and upon his statement an application under Section 319 Cr.P.C. was moved for summoning Gurvinder Singh, Amarjit Kaur, Rajvinder Kaur and Basant Singh above-

said. The Court of learned Additional Sessions Judge, Tarn Taran through impugned orders dated 30.11.2016 dismissed the application. It is against these findings, the present revision has come about.

Upon hearing Mr. P.B.S. Goraya, Advocate for the petitioner; Mr. Pawan Sharda, Sr. Dy. Advocate General, Punjab representing respondent No.1/State; Ms. Shubreet Saron, Advocate on behalf of respondents No.2 to 5 and on perusal of the records of the case. As is argued and reflective from the records, the very document, first in point of time after the occurrence (Annexure P2) clearly illustrates that Manjeet Kaur deceased, daughter of the complainant was married with Gurjit Singh on 29.11.2014 where as per the allegations costly items were given well enumerated in the FIR and it was on 30.11.2014 the complainant received a telephonic call from his daughter confiding in the father the conduct of the accused and their remarks over insufficiency of the dowry and for not having given a bigger car. It is categorically mentioned that the deceased Manjeet Kaur thereafter disconnected the phone and showed her anguish and looked to be scared and depressed. It is on 01.12.2014, the unfortunate father received the information as to the death of his daughter. The complainant has categorically stated that it was elder brother of the husband Gurvinder Singh, his wife Amarjit Kaur, sister Rajvinder Kaur and her husband Basant Singh along with co-accused had connived to put an end to the life of his daughter. It is subsequent thereto, in his compliant to the Senior Superintendent of Police made on

06.05.2015, the complainant had raked up the plea how these persons have not been arrested and are roaming free and apprehending that fair investigation was not being carried out by the police. In his deposition as PW1, the complainant has reiterated his stand and the allegations levelled against all the accused persons.

The Hon'ble Supreme Court in '**Hardeep Singh v. State of Punjab**' 2014(3) SCC 92, has observed as under:-

“Question Nos.1 & III: Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

*A. In **Dharam Pal's case**, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.*

Section 319 Cr.P.C. significantly uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a

pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II: Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV: Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be

exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.”

Their Lordships in the case of **‘Periyasami and others vs. S. Nallasamy’ (2019) 4 SCC 342**, cited on behalf of the private respondents by Ms. Shubreet Saron, Advocate, have relied upon **Hardeep Singh’s judgment (ibid)**. However, learned counsel for the respondents cannot take any advantage of the cited ratio in view of the factual disparity as the names of the parties so sought to be summoned as additional accused in the cited ratio did not find mention nor any description thereof, thus much at variance from the case before this Court. The learned Court below in the impugned findings, instead of adjudging the evidence so on

the records on the touchstone of truthfulness and veracity, has critically evaluated the same which it was not supposed to do and thus, has fallen into a grave error resulting in miscarriage of justice. Right from the inception till the testimony of the complainant, there has been clear cut uniformity in the allegations and it cannot be observed that there is material improvement and the evidence so on the records went amiss to the needs of “evidence” for the learned trial Court. In the light of the same, the impugned findings are wrong interpretation of law and the facts, and thus need to be set aside by way of acceptance of the present revision petition. Ordered accordingly.

(FATEH DEEP SINGH)
JUDGE

November 16, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No